



## RESOLUTION

APPROVING FOR INCLUSION IN THE 2013 HAWAII STATE ASSOCIATION OF COUNTIES LEGISLATIVE PACKAGE A PROPOSAL THAT REQUIRES A PRESCRIPTION TO PURCHASE ANY PRODUCT THAT CONTAINS PSEUDOEPHEDRINE.

WHEREAS, methamphetamine ("meth") use in states across the U.S., including Hawaii, is resulting in an enormous economic cost that the RAND Corporation's Drug Policy Research Center has estimated at \$23.4 billion in 2005; and

WHEREAS, in addition to the economic costs of meth use, the social costs are measured in destroyed lives, broken homes and other collateral damage that undermines the very fabric of our society; and

WHEREAS, according to the Hawaii Meth Project, the following recent statistics point to the growing problem in Hawaii:

- The economic cost of meth use in Hawaii is \$500 million annually for incarceration, foster care, healthcare, lost employee productivity and treatment;
- Of all federally-sentenced drug cases in Hawaii, 90% involve meth;
- Hawaii ranks number 2 in the nation for the percentage of drug-related treatment admissions that are meth-related;
- Workers in Hawaii are 4 times more likely to test positive for meth than the national average in workplace drug testing; and
- 56% of teens and young adults in Hawaii say meth would be easy to acquire, and 34% of teens and young adults report they have been offered the drug;

and

WHEREAS, a key factor in the prevalence and availability of meth is the widespread use of homes and apartments as meth labs, which use common ingredients to "cook" meth; and

WHEREAS, the key ingredient in meth that cannot be replaced is pseudoephedrine, found in many over-the-counter cold medicines; and



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WHEREAS, while Hawaii state law currently restricts the amount of pseudoephedrine that can be obtained at any one time and mandates reporting requirements for pharmacies and retailers, it does not require a doctor's prescription to obtain pseudoephedrine (§329-75, HRS); and

WHEREAS, the manufacture and availability of meth in Hawaii has not been noticeably reduced as a result of current state law, and anecdotal evidence suggests that those involved in meth labs have found ways around Hawaii's law; and

WHEREAS, two states, Oregon and Mississippi, now require prescriptions for pseudoephedrine and have seen dramatic results including the following:

- Both states have reported a dramatic decline in meth labs, with the U.S. Drug Enforcement Agency reporting that the number of meth lab incidents (including labs, dump sites, and equipment) in Oregon, which has a longer history under the pseudoephedrine law, declined from 467 in 2004 to 12 in 2010;
- In Oregon, meth-related seizures and arrests are down 96% since 2006, while in Mississippi, seizures and arrests are down 66% since the law took effect mid-2010; and
- In Oregon, total crime has dropped to a 50-year low, and requests for meth-related treatment have dropped by 33%;

and

WHEREAS, the Council finds that requiring a prescription to obtain pseudoephedrine is a proven method of reducing the manufacture and availability of meth, which will directly result in reducing the levels of meth use and related economic costs in Hawaii; and

WHEREAS, the Council further finds that requiring a prescription to obtain pseudoephedrine is a reasonable restriction that is currently employed in the distribution of other controlled substances for medical reasons, namely all prescription drugs; and

WHEREAS, the unanimous approval of the county councils is necessary for inclusion of a proposal in the Hawaii State Association of County's legislative package; now, therefore,



## Exhibit A

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# A BILL FOR AN ACT

RELATING TO PSEUDOEPHEDRINE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that methamphetamine is a  
2 highly addictive drug with dangerous long-term side effects  
3 including addiction, anxiety, insomnia, and violent behavior.  
4 The legislature also finds that pseudoephedrine, a safe,  
5 effective, and widely-used over the counter decongestant, is an  
6 essential ingredient used to make methamphetamine.

7           The legislature finds that some state governments have  
8 taken steps to address the growing number of methamphetamine  
9 labs in their states. Oregon and Mississippi have passed laws  
10 requiring prescriptions for pseudoephedrine. The purpose of  
11 this Act is to classify pseudoephedrine as a schedule V drug  
12 that may only be dispensed with a prescription.

13           SECTION 2. Section 329-22, Hawaii Revised Statutes, is  
14 amended to read as follows:

15           "§329-22   Schedule V.

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1 (a) The controlled substances listed in this section are  
2 included in schedule V.

3 (b) Narcotic drugs containing nonnarcotic active medicinal  
4 ingredients. Any compound, mixture, or preparation containing  
5 limited quantities of any of the following narcotic drugs, which  
6 also contains one or more nonnarcotic active medicinal  
7 ingredients in sufficient proportion to confer upon the  
8 compound, mixture, or preparation, valuable medicinal qualities  
9 other than those possessed by the narcotic drug alone:

10 (1) Not more than 200 milligrams of codeine, or any  
11 of its salts, per 100 milliliters or per 100  
12 grams;

13 (2) Not more than 100 milligrams of hydrocodeine, or  
14 any of its salts, per 100 milliliters or per 100  
15 grams;

16 (3) Not more than 100 milligrams of ethylmorphine, or  
17 any of its salts, per 100 milliliters or per 100  
18 grams;

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1 (4) Not more than 2.5 milligrams of diphenoxylate and  
2 not less than 25 micrograms of atropine sulfate  
3 per dosage unit;

4 (5) Not more than 100 milligrams of opium per 100  
5 milliliters or per 100 grams; and

6 (6) Not more than 0.5 milligram of difenoxin and not  
7 less than 25 micrograms of atropine sulfate per  
8 dosage unit.

9 (c) Stimulants. Unless specifically exempted or excluded  
10 or unless listed in another schedule, any material, compound,  
11 mixture, or preparation that contains any quantity of the  
12 following substances having a stimulant effect on the central  
13 nervous system, including its salts, isomers, and salts of  
14 isomers[-]: pseudoephedrine or any drug containing  
15 pseudoephedrine.

16 (d) Depressants. Unless specifically exempted or excluded  
17 or unless listed in another schedule, any material, compound,  
18 mixture, or preparation that contains any quantity of the  
19 following substances having a depressant effect on the central

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1 nervous system, including its salts, isomers, and salts of  
2 isomers:

3 (1) Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-  
4 propionamide], (Vimpat); and

5 (2) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic  
6 acid].

7 (e) No later than July 1, 2013, all drugs containing  
8 pseudoephedrine shall be subject to the requirements of section  
9 329-38."

10 SECTION 3. Section 329-38, Hawaii Revised Statutes, is  
11 amended by amending subsection (a) to read as follows:

12 "(a) No controlled substance in schedule II or  
13 pseudoephedrine may be dispensed without a written prescription  
14 of a practitioner, [~~except+~~] with the following exceptions:

15 (1) [~~In~~] For purposes of a controlled substance in  
16 schedule II or pseudoephedrine, in the case of an  
17 emergency situation, a pharmacist may dispense a  
18 controlled substance listed in schedule II or  
19 pseudoephedrine upon receiving oral authorization  
20 from a prescribing practitioner; provided that:

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- 1 (A) The quantity prescribed and dispensed is  
2 limited to the amount adequate to treat the  
3 patient during the emergency period  
4 (dispensing beyond the emergency period must  
5 be pursuant to a written prescription signed  
6 by the prescribing practitioner);
- 7 (B) If the prescribing practitioner is not known  
8 to the pharmacist, the pharmacist shall make  
9 a reasonable effort to determine that the  
10 oral authorization came from a registered  
11 practitioner, which may include a callback  
12 to the prescribing practitioner using the  
13 phone number in the telephone directory or  
14 other good faith efforts to identify the  
15 prescriber; and
- 16 (C) Within seven days after authorizing an  
17 emergency oral prescription, the prescribing  
18 practitioner shall cause a written  
19 prescription for the emergency quantity  
20 prescribed to be delivered to the dispensing

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1 pharmacist. In addition to conforming to  
2 the requirements of this subsection, the  
3 prescription shall have written on its face  
4 "Authorization for Emergency Dispensing".  
5 The written prescription may be delivered to  
6 the pharmacist in person or by mail, and if  
7 by mail, the prescription shall be  
8 postmarked within the seven-day period.  
9 Upon receipt, the dispensing pharmacist  
10 shall attach this prescription to the oral  
11 emergency prescription, which had earlier  
12 been reduced to writing. The pharmacist  
13 shall notify the administrator if the  
14 prescribing practitioner fails to deliver a  
15 written prescription to the pharmacy within  
16 the allotted time. Failure of the  
17 pharmacist to do so shall void the authority  
18 conferred by this paragraph to dispense  
19 without a written prescription of a  
20 prescribing individual practitioner. Any

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1 practitioner who fails to deliver a written  
2 prescription within the seven-day period  
3 shall be in violation of section  
4 329-41(a)(1); or

5 (2) When dispensed directly by a practitioner, other  
6 than a pharmacist, to the ultimate user. The  
7 practitioner in dispensing a controlled substance  
8 in schedule II shall affix to the package a label  
9 showing:

10 (A) The date of dispensing;

11 (B) The name, strength, and quantity of the drug  
12 dispensed;

13 (C) The dispensing practitioner's name and  
14 address;

15 (D) The name of the patient;

16 (E) The "use by" date for the drug, which shall  
17 be:

18 (i) The expiration date on the  
19 [manufacturer's] or principal labeler's  
20 container; or

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- 1                   (ii) One year from the date the drug is  
2                                   dispensed, whichever is earlier; and  
3                   (F) Directions for use, and cautionary  
4                                   statements, if any, contained in the  
5                                   prescription or as required by law.

6           A complete and accurate record of all schedule II  
7 controlled substances ordered, administered, prescribed, and  
8 dispensed shall be maintained for five years. Prescriptions and  
9 records of dispensing shall otherwise be retained in conformance  
10 with the requirements of section 329-36. No prescription for a  
11 controlled substance in schedule II may be refilled."

12           SECTION 4. Section 329-64, Hawaii Revised Statutes, is  
13 amended by amending subsection (a) to read as follows:

14           "(a) The requirements imposed by sections 329-62 and  
15 329-63(a) of this part shall not apply to any of the following:

- 16                   (1) Any pharmacist or other authorized person who  
17                                   sells or furnishes a substance upon the  
18                                   prescription of a physician, dentist, podiatrist,  
19                                   or veterinarian;

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- (2) Any physician, dentist, podiatrist, or veterinarian who administers or furnishes a substance to patients;
- (3) Any manufacturer or wholesaler licensed by the State who sells, transfers, or otherwise furnishes a substance to a licensed pharmacy, physician, dentist, podiatrist, or veterinarian[; and
- (4) Any sale, transfer, furnishing, or receipt of any drug that contains [~~pseudoephedrine or~~ norpseudoephedrine that is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 United States Code section 301 et seq.) or regulations adopted thereunder as long as it complies with the requirements of sections [~~329-73, 329-74, and 329-75.~~] 329-38."

1 SECTION 5. Section 329-75, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§329-75 [~~Sales of products, mixtures, or preparations~~  
4 ~~containing pseudoephedrine; reporting]~~ Reporting requirement for  
5 wholesalers.

6 [~~(a) Notwithstanding any other law to the contrary, a~~  
7 ~~pharmacy or retailer may sell or distribute to a person without~~  
8 ~~a prescription products containing not more than 3.6 grams per~~  
9 ~~day or not more than nine grams per thirty-day period of~~  
10 ~~pseudoephedrine, without regard to the number of transactions;~~  
11 ~~provided that the pharmacy or retailer shall comply with the~~  
12 ~~following conditions:~~

13 ~~(1) The product, mixture, or preparation shall be~~  
14 ~~sold or distributed from an area not accessible~~  
15 ~~by customers or the general public, such as~~  
16 ~~behind the counter or in a locked display case~~  
17 ~~and where the pharmacy or retailer delivers the~~  
18 ~~product directly into the custody of the person~~  
19 ~~purchasing or obtaining the substances;~~

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- 1           ~~(2) Any person purchasing or otherwise obtaining any~~
- 2                     ~~product, mixture, or preparation shall produce~~
- 3                     ~~valid, government-issued identification~~
- 4                     ~~containing the photograph, date of birth, printed~~
- 5                     ~~name, signature, and address of the person~~
- 6                     ~~purchasing or obtaining the substance;~~
- 7           ~~(3) The pharmacy or retailer shall maintain a written~~
- 8                     ~~or electronic log of required information for~~
- 9                     ~~each sale of a nonprescription product containing~~
- 10                    ~~pseudoephedrine, including:~~
- 11                    ~~(A) The date and time of any transaction under~~
- 12                             ~~paragraph (2);~~
- 13                    ~~(B) The name, address, and date of birth of the~~
- 14                             ~~person purchasing or obtaining the~~
- 15                             ~~substance;~~
- 16                    ~~(C) The type of identification provided by the~~
- 17                             ~~person purchasing or obtaining the substance~~
- 18                             ~~and identification number;~~
- 19                    ~~(D) The agency issuing the identification used;~~
- 20                             ~~and~~

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1                   ~~(E) The name of the compound, mixture, or~~  
2                                   ~~preparation, and the amount; and~~

3                   ~~(4) The pharmacy or retailer shall require every~~  
4                                   ~~person purchasing or obtaining the substance to~~  
5                                   ~~sign a written or electronic log attesting to the~~  
6                                   ~~validity of the information.~~

7                   ~~The information shall be retained by the pharmacy or~~  
8                   ~~retailer for a period of two years. The written or electronic~~  
9                   ~~log shall be capable of being checked for compliance against all~~  
10                   ~~state and federal laws, including interfacing with other states~~  
11                   ~~to ensure comprehensive compliance, and shall be subject to~~  
12                   ~~random and warrantless inspection by county or state law~~  
13                   ~~enforcement officers.~~

14                   ~~(b) Beginning January 1, 2013, before completing a sale of~~  
15                   ~~an over-the-counter product containing pseudoephedrine, a~~  
16                   ~~pharmacy or retailer shall electronically submit the information~~  
17                   ~~required pursuant to subsection (a) to the National Precursor~~  
18                   ~~Log Exchange administered by the National Association of Drug~~  
19                   ~~Diversion Investigators; provided that the National Precursor~~  
20                   ~~Log Exchange is available to pharmacies or retailers in the~~

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1 ~~State without a charge for accessing the system. The pharmacy~~  
2 ~~or retailer shall not complete the sale if the system generates~~  
3 ~~a stop sale alert. Except in the case of negligence,~~  
4 ~~wantonness, recklessness, or deliberate misconduct, any pharmacy~~  
5 ~~or retailer using the electronic sales tracking system in~~  
6 ~~accordance with this subsection shall not be civilly liable as a~~  
7 ~~result of any act or omission in carrying out the duties~~  
8 ~~required by this subsection and shall be immune from liability~~  
9 ~~to any third party, unless the pharmacy or retailer has violated~~  
10 ~~this subsection, in relation to a claim brought for such~~  
11 ~~violation.~~

12 ~~(c) If a pharmacy or retailer selling an over-the-counter~~  
13 ~~product containing pseudoephedrine experiences mechanical or~~  
14 ~~electronic failure of the electronic sales tracking system and~~  
15 ~~is unable to comply with the electronic sales tracking~~  
16 ~~requirement under this section, the pharmacy or retailer shall~~  
17 ~~maintain a written log or an alternative electronic~~  
18 ~~recordkeeping mechanism until such time as the pharmacy or~~  
19 ~~retailer is able to comply with the electronic sales tracking~~  
20 ~~requirement.~~

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1       ~~(d) A pharmacy or retailer selling an over-the-counter~~  
2 ~~product containing pseudoephedrine may seek an exemption from~~  
3 ~~submitting transactions to the electronic sales tracking system~~  
4 ~~in writing to the administrator stating the reasons therefore.~~  
5 ~~The administrator may grant an exemption for good cause shown,~~  
6 ~~but in no event shall the exemption exceed one hundred eighty~~  
7 ~~days. Any pharmacy or retailer that receives an exemption shall~~  
8 ~~maintain a hard copy log and shall require the person purchasing~~  
9 ~~or obtaining the substance to provide the information required~~  
10 ~~under this section before completion of any sale. The log shall~~  
11 ~~be maintained as a record of each sale for inspection by any law~~  
12 ~~enforcement officer or inspector of the board of pharmacy during~~  
13 ~~normal business hours.~~

14       ~~(e) The National Association of Drug Diversion~~  
15 ~~Investigators shall forward Hawaii transaction records in the~~  
16 ~~National Precursor Log Exchange to the narcotics enforcement~~  
17 ~~division of the department of public safety weekly and provide~~  
18 ~~real-time access to National Precursor Log Exchange information~~  
19 ~~through the National Precursor Log Exchange online portal to law~~  
20 ~~enforcement in the State as authorized by the narcotics~~

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1 ~~enforcement division; provided that the narcotics enforcement~~  
2 ~~division executes a memorandum of understanding with the~~  
3 ~~National Association of Drug Diversion Investigators governing~~  
4 ~~access to the information; provided further that the department~~  
5 ~~of public safety narcotics enforcement division shall establish~~  
6 ~~the electronic tracking system in conjunction with the State's~~  
7 ~~existing narcotics tracking system beginning no later than~~  
8 ~~January 1, 2015.~~

9 ~~(f) This system shall be capable of generating a stop sale~~  
10 ~~alert, which shall be a notification that completion of the sale~~  
11 ~~would result in the pharmacy or retailer, or person purchasing~~  
12 ~~or obtaining the substance, violating the quantity limits set~~  
13 ~~forth in this section. The system shall contain an override~~  
14 ~~function that may be used by a pharmacy or retailer selling~~  
15 ~~pseudoephedrine who has a reasonable fear that imminent bodily~~  
16 ~~harm will result if the sale is not completed. Each instance~~  
17 ~~where the override function is used shall be logged by the~~  
18 ~~system.~~

19 ~~(g) No person shall knowingly purchase, receive, or~~  
20 ~~otherwise acquire products containing more than 3.6 grams per~~

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1 ~~day or more than nine grams per thirty-day period of~~  
2 ~~pseudoephedrine, except that this limit shall not apply to any~~  
3 ~~quantity of such product, mixture, or preparation dispensed~~  
4 ~~pursuant to a valid prescription.~~

5 ~~(h) Any person who violates subsections (b) through (g) is~~  
6 ~~guilty of a class C felony.~~

7 ~~(i) The department, by rule, may exempt other products~~  
8 ~~from this section, if the administrator finds that the products~~  
9 ~~are not used in the illegal manufacture of methamphetamine or~~  
10 ~~other controlled substances. A manufacturer of a drug product~~  
11 ~~may apply for removal of the product from this section if the~~  
12 ~~product is determined by the administrator to have been~~  
13 ~~formulated in such a way as to effectively prevent the~~  
14 ~~conversion of the active ingredient into methamphetamine.~~

15 ~~(j)]~~ Notwithstanding any other provision of this chapter  
16 to the contrary, every wholesaler shall report to the  
17 administrator all sales made to any retailer, of any product,  
18 mixture, or preparation containing any detectable quantity of  
19 pseudoephedrine, its salts, optical isomers, or salts of optical  
20 isomers, as the only active ingredient or in combination with

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1 other active ingredients. The department shall provide a common  
2 reporting form that contains at least the following information  
3 about the product, mixture, or preparation:

- 4 (1) Generic or other name;
- 5 (2) Quantity sold;
- 6 (3) Date of sale;
- 7 (4) Name and address of the wholesaler; and
- 8 (5) Name and address of the retailer.

9 ~~[(k) Intentional or knowing failure of a retailer or~~  
10 ~~pharmacy to transmit any information as required by this section~~  
11 ~~shall be a misdemeanor and shall result in the immediate~~  
12 ~~suspension of that retailer's ability to sell any product,~~  
13 ~~mixture, or preparation containing any detectable quantity of~~  
14 ~~pseudoephedrine, its salts, optical isomers, or salts of optical~~  
15 ~~isomers as the only active ingredient or in combination with~~  
16 ~~other active ingredients until authorized by the~~  
17 ~~administrator."]~~

18 SECTION 6. Section 329-73, Hawaii Revised Statutes, is  
19 repealed.

20 [~~§329-73 Pseudoephedrine permit.~~]



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1 ~~a wholesaler, distributor, or retailer of such product~~  
2 ~~authorized to conduct business as such by the State.~~

3 ~~(c) Unlawful transport of pseudoephedrine is a~~  
4 ~~misdemeanor." ]~~

5 SECTION 8. This Act does not affect the rights and duties  
6 that matured, penalties that were incurred, and proceedings that  
7 were begun before its effective date.

8 SECTION 9. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10 SECTION 10. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_

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CITY COUNCIL  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII  
CERTIFICATE

**RESOLUTION 12-179**

Introduced: 07/18/12 By: ERNEST MARTIN

Committee: EXECUTIVE MATTERS  
AND LEGAL AFFAIRS

Title: RESOLUTION APPROVING FOR INCLUSION IN THE 2013 HAWAII STATE ASSOCIATION OF COUNTIES  
LEGISLATIVE PACKAGE A PROPOSAL THAT REQUIRES A PRESCRIPTION TO PURCHASE ANY  
PRODUCT THAT CONTAINS PSEUDOEPHEDRINE.

Links: [RES12-179](#)  
[CR-246](#)

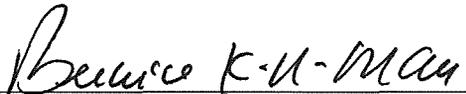
Voting Legend: Y= Aye, Y\* = Aye w/Reservations, N = No, A = Absent, ABN = Abstain

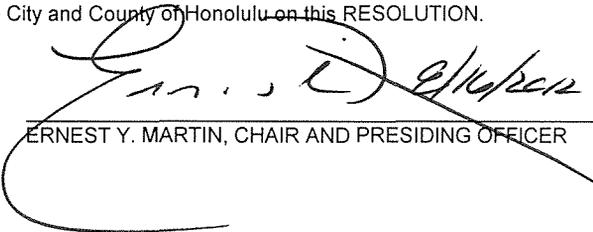
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EXECUTIVE MATTERS AND LEGAL AFFAIRS	07/24/12	CR-246 – RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION.							
COUNCIL	08/15/12	CR-246 AND RESOLUTION 12-179 WERE ADOPTED.							
ANDERSON	Y*	BERG	N	CACHOLA	A	CHANG	Y	GABBARD	N
GARCIA	Y	HARIMOTO	Y	KOBAYASHI	Y	MARTIN	Y		

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I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.

  
BERNICE K. N. MAU, CITY CLERK

  
ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER